



MAIL Paper No. 20

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DIRECTOR OFFICE
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In re Application of:

Calderbank et al.

Application No. 09/300,494

Filed: April 28, 1999

For: COMBINED CHANNEL CODING
ANMD SPACE-BLOCK CODING IN A
MULTI-ANTENNA ARRANGEMENT

DECISION
ON PETITION

This is a decision on the Petition to Withdraw Holding of Abandonment filed December 22, 2003, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

The application was abandoned for failure to respond in a timely and effective manner to the final Office action mailed April 23, 2003. A Notice of Abandonment was mailed December 12, 2003.

Petitioner alleges to have timely file an amendment via facsimile on July 31, 2003. In support thereof, a copy of the fax receipt generated by the PTO, which serves as evidence of timely receipt by the PTO, is included with the petition in compliance with the requirements of 37 CFR 1.8(a)(1). Therefore, it is concluded that the papers were timely filed in the Patent and Trademark Office but not matched with the application file.

MPEP § 714.13 [R-1] Amendments After Final Rejection or Action, Procedure Followed, states in part:

FINAL REJECTION — TIME FOR REPLY

If an applicant initially replies within 2 months from the date of mailing of any final rejection setting a 3-month shortened statutory period for reply and the Office does not mail an advisory action until after the end of the 3-month shortened statutory period, the period for reply for purposes of determining the amount of any extension fee will be the date on which the Office mails the advisory action advising applicant of the status of the application, but in no event can the period extend beyond 6 months from the date of the final rejection...

If no appeal has been filed within the period for reply and no amendment has been submitted to make the application allowable or which can be entered in part (see MPEP § 714.20), the application stands abandoned. [emphasis added]

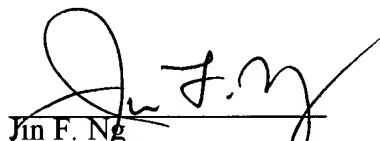
37 C.F.R. § 1.121(c) states in part:

(c)*Claims*. Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this sub-section, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (With-drawn), (Previously presented), (New), and (Not entered). [emphasis added]

Petitioner has successfully demonstrated that a reply was timely filed to the outstanding final Office action. However, as set forth in MPEP §714.13 above, although the submission was filed timely with a one month extension of time request from the mailing date of the final Office action, the time period for reply can not extend beyond 6 months. It has been determined in the attached Notice of Non-Compliant Amendment, that the submission did not place the application in condition for allowance. Given that the submission did not properly comply with the requirements of 37 C.F.R. § 1.121, the application is abandoned.

Therefore, the petition to withdraw holding of abandonment is **DENIED**.

The application will be forwarded to the file repository. Applicants may wish to consider a petition under 37 C.F.R. §1.137(b) if they wish to revive the application.


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Attachments: Notice of Non-Compliant Amendment